HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.521 of 2007

Between:

Katreddy Kusumeshwar Rao

... Appellant

And

The Panchayat Secretary, Pedakapavaram Gram Panchayat, Akiveedu Mandal, West Godavari District and four others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri Noushad Ali

June 26, 2007

Per G.S. Singhvi, CJ

Whether the appellant Gram Panchayat is entitled to sell coconut trees raised over the lands abutting canal, which belong to Public Works Department (PWD), is the question which arises for determination in this appeal filed by Katreddy Kusumeshwar Rao against order dated 6.2.2007 passed by the learned Single Judge in Writ Petition No.20746 of 2006.

The appellant is the Sarpanch of Pedakapavaram Gram Panchayat, Akividu Mandal, West Godavari District. He filed writ petition under Article 226 of the Constitution of India with the complaint that the authorities of PWD are interfering with the right of the Gram Panchayat to auction 175 coconut trees planted alongside the canals

and channels in Padakapavaram Village. He claimed that the trees had been raised on the land abutting the canal by the adjacent land owners, which constitutes Gram Kantham, and that the Gram Panchayat had been auctioning the same for last many years without any objection, but now respondent Nos.2 to 4 are seeking to take possession of the trees and the coconut crops.

Shri Md. Usmankhan, Secretary, Pedakapavaram Gram Panchayat filed affidavit supporting the cause of the appellant. He pleaded that in terms of Section 55 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Gram Panchayat Act') all the communal properties including the lands vest with the Gram Panchayat and, as a matter of fact, the Gram Panchayat has been enjoying the usufruct of the trees and grass on the road margins for last many decades.

Respondent Nos.2 to 4 opposed the writ petition. In the affidavit filed on their behalf, it was averred that the coconut trees have been grown along canal and channel bunds, which belong to PWD (Irrigation Department); that the coconut trees are not located in Gramakantham land; that the Gram Panchayat does not have any right to conduct auction of the coconut trees; that in terms of Section 22 (iv) read with Section 17 of the Andhra Pradesh Farmers Management of Irrigation Systems Act, 1997 (for short, 'the 1997 Act'), the revenue generated through PWD lands belongs to the concerned Water Users Association. Along with the counter, respondent Nos. 2 to 4 placed on record letter No.CAD/DCEA 108/97, dated 5.9.2006 sent by Commissioner and Principal Secretary to Government, Irrigation and Command Area Development, Hyderabad to District Collector, Guntur with copies to other District Collectors.

The petitioner filed rejoinder affidavit and reiterated the stand taken by him.

The learned Single Judge referred to the provisions of Sections 46, 55, 56, 74 (2)(xvii), 80 and 147 of the Gram Panchayat Act, Sections 17 and 22 (iv) of the 1997 Act and Rule 5 of the Andhra

Pradesh Farmers' Organisation Rules, 1997 (for short, 'the Rules') and held that unless the government transfers the right to enjoy income from the trees raised alongside canal bunds and channels to the Gram Panchayat, the latter cannot auction the same and generate revenue. The learned Single Judge further held that the lands abutting canals and channels were never transferred to the Gram Panchayat and, therefore, it cannot usurp the income derived from the coconut crops.

Shri Naushad Ali relied on Sections 46 and 55 of the Gram Panchayat Act and argued that the trees planted alongside canal bunds and channels constitute the property of the Gram Panchayat and the latter is entitled to auction the same for augmenting its revenue. Learned counsel referred to Section 42 of the 1997 Act and argued that the properties vested in the Gram Panchayat etc. are not affected by the provisions of the 1997 Act. He criticised the order of the learned Single Judge by arguing that the reason assigned by him for declining relief to the appellant are legally unsound. Learned counsel emphasised that till the enforcement of 1997 Act, the Gram Panchayat was auctioning the trees and crops without any objection from respondent Nos.2 to 4 and this should be treated as sufficient for restraining respondent Nos.2 to 4 from interfering with the Gram Panchayat's right to auction the trees and crops.

In our opinion, there is no merit in either of the arguments. Sections 46 (ii), 55, 74 (2)(xvii), 80 of the Gram Panchayat Act, Section 22 of the 1997 Act and Rule 5 (vii) of the Rules, which have bearing on the decision of this appeal, read as under:

Andhra Pradesh Panchayat Raj Act, 1994

46. Power of Gram Panchayat to provide for certain other matters

Subject to the provisions of this Act and the rules made thereunder, a Gram Panchayat may also make such provision as it thinks fit for carrying out the requirements of the village in respect of the following matters, namely:

… … …

(ii) the planting and preservation of groves and trees on the sides of roads and other public places;

… … …

55. Vesting of communal property or income in Gram Panchayat:

Any property or income which by custom belongs to or has been administered for the benefit of the villagers in common, or the holders in common of village land generally or of lands of a particular description or of lands under a particular source of irrigation, shall vest in the Gram Panchayat and be administered by it for the benefit of the villagers or holders aforesaid.

74. Gram Panchayat Fund:

… … …

(2) Subject to the provisions of sub section (1), the receipts which shall be credited to the Gram Panchayat fund shall include –

… … …

(xvii) all income derived from trees standing on porambokes although the user of the porambokes is not vested in the Gram Panchayat;

… … …

80. Vesting of water works in Gram Panchayats:

(1) All public water courses, springs, reservoirs, tanks, cisterns, fountains, wells, stand pipes and other water works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement of this Act or afterwards made, laid or erected and whether made, laid or erected at the cost of the Gram Panchayat or otherwise for the use or benefit of the public, and also any adjacent land, not being private property, appertaining thereto shall vest in the Gram Panchayat and be subject to its control:

Provided that nothing in this sub section shall apply to any work which is, or is connected with, a work of irrigation or to any adjacent land appertaining to any such work.

(2) Subject to such restrictions and control as may be prescribed, the Gram Panchayat shall have the fishery rights in any water work vested in it under sub section (1), the right to supply water from any such work for raising seed beds on payment of the prescribed fee, and the right to use the adjacent land appertaining thereto for planting of trees and enjoying the usufruct thereof or for like purpose.

(3) The Government may, by notification, define or limit such control or may, assume the administration of any public source of water supply and public land adjacent and appertaining thereto after consulting, the Gram Panchayat and giving due regard to its objections, if any.

Andhra Pradesh Farmers Management of Irrigation System Act, 1997

22. Resources of Farmers' Organisation:

The funds of the Farmers' Organisation shall comprise of the following, namely:-

(i) grants received from the Government as a share of the water tax collected in the area of operation of the Farmers' Organisation;
(ii) such other funds as may be granted by the State and Central Government for the development of the area of operation;
(iii) resources raised from any financing agency for undertaking any economic development activities in its area of operation;
(iv) income from the properties and assets attached to the irrigation system within its area of operation;
(v) fees collected by the Farmers' Organisation for the services rendered in better management of the irrigation system; and
(vi) amounts received from any other source.

A.P.Farmers Organisation Rules, 1997:
Rule 5:

… … …

(vii) To utilise the canal bunds – as long as such use is not obstructive, or destructive to hydraulic structures – by planting timber, fuel or fruit trees or grass for augmenting the income of the farmers organisation.

For the sake of convenience, letter dated 5.9.2006, to which reference has been made hereinabove, is also reproduced below:

GOVERNMENT OF ANDHRA PRADESH
IRRIGATION & CAD DEPARTMENT

From:
Sri S.P. Tucker, IAS,
Commissioner, CAD & Prl. Secretary
to Government, I & CAD Department,
Jalasoudha Building, Hyderabad.

To
The District Collector,
Guntur District,
Guntur.

Lr.No.CAD/DCEA108/97 Dated: 5-9-2006

Sir,

Sub:- Sale of grass on K.W.Delta System – Entrustment of Auction rights to water users associations – Reg.

Ref: Clarification sought by the Executive Engineer, KW Division, Tenali, during the review meeting on 31-8-2006.

…

Adverting to the above mentioned subject, it is informed that as per APFMIS Act, 1997, the functions of the farmers' organisations include maintenance of the irrigation system and equitable water distribution among the users duly involving the farmers. It has come to the notice of this officer that P.R. Department Officers are proposing sale of grass on canal bunds. The Executive Engineer, K.W. Division has informed that the WUAs are requesting for orders for auction of the sale of grass.

In order to carry out the O & M and water distribution “raising of resources” (Section 17 K) is also one of the functions of the Farmers Organisation. As per Sec.22 (iv), the funds of the farmers organisation shall comprise of income from the properties and assets attached to the Irrigation Department within the area of operation. As per Rule 5 (vii) of 541 G.O. I & CAD (CAD.IV) Dept., dated 27.12.1997 the WUAs “they can utilise the canal bunds – as long as such use is not obstructive of destructive to hydraulic structures – by planting timber, fuel, or fruit trees or grass for augmenting the income of the farmers organisation.”

The Andhra Pradesh Public Works Department Code Para No.344 gives the procedure for sale of usufruct of trees etc.

Accordingly, it is the duty of the Public Works Department Divisional Officers to see that the sales of miscellaneous properties such as usufruct of trees, grass etc. are made periodically to the best advantage of the government. The sales should be made by public auction after the publicity has been given.

Previously there are no farmers organisation existing, as such it was mentioned the lease of grass is given to the Gram Panchayats. However, now Farmers Organisations are functioning and they have responsibilities to perform for which they require funds.

As the Krishna Delta comes under Major Irrigation Category, the Irrigation Department and the farmers organisations have the right to lease the grass and rights on other usufruct of miscellaneous properties.

As such, the District Collector, Guntur is requested to issue suitable instructions to all the concerned for compliance after discussing with the Superintending Engineer and District Panchayat Officer also.

Requesting for early action.

Yours faithfully,
Sd/-
Commissioner, CAD

Copy to the District Collectors for information and necessary action.
Copy to the Engineer-in-Chief (Major), Chief Engineer (Medium), NSP, SRSP, (Stage-II), TBP, TGP for information and necessary action.

Copy to the Superintending Engineers of Irrigation & Project Circles for information and necessary action.

A careful analysis of the provisions of the Gram Panchayat Act shows that in terms of Section 46 (ii), a Gram Panchayat can make provision for plantation and preservation of groves and trees on the sides of roads and other public places. Section 55 declares that any property or income which by custom belongs to or has been administered for the benefit of the villages in common or the holders in

common of village land generally or of lands of a particular description or of lands under a particular source of irrigation, shall vest in the Gram Panchayat and be administered for the benefit of the villagers or the holders of land. Section 74, which speaks of Gram Panchayat fund, lays down that all moneys received by Gram Panchayat constitute Gram Panchayat fund and the same shall be applied and disposed of in accordance with the provisions of the Gram Panchayat Act. All incomes derived from trees standing on porambokes constitute part of the Gram Panchayat fund.

In our opinion, these provisions cannot be made basis for entertaining the claim of the appellant because no evidence was produced before the learned Single Judge and none has been produced before the Division Bench to show that the land abutting canals and irrigation system vests in the Gram Panchayat. As against this, respondent Nos.2 to 4 have come up with a categorical assertion that the land abutting the canals vest in the Public Works Department. This being the position, the appellant cannot contend that the Gram Panchayat has the jurisdiction, power and authority to auction the trees belonging to the public works department and utilise the income generated by auctioning the trees and crops. Section 22 (iv) of the 1997 Act clearly lays down that the funds of the farmers' organisation shall comprise income from the properties and assets attached to the irrigation system within its area of operation. Since the canal and the channel bunds vests in the Public Works Department, only the water users association can auction the trees raised alongside the canal etc. and the Gram Panchayat does not have any locus to seek a direction that it should be allowed to auction the coconut trees and crops and utilise the income derived therefrom. This position has been amply clarified by the government vide letter dated 5.9.2006.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1006 of 2007

filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 26, 2007

C.V. NAGARJUNA REDDY, J

svs